and case systems of teaching law. The consensus of opinion seemed to be that the case method was gaining ground, and that books of cases with some independent matter, like those edited by Prof. J. B. Thayer of Harvard were, perhaps, best adapted to the use of reasonably mature and able students.

An interesting letter was read, describing a Legal Dispensary conducted by the Law School of the University of Pennsylvania, designed to afford students some practical experience in dealing with actual cases. It may be noted in passing that since that time a similar experiment has been attempted by Harvard law students with somewhat profitable results.

The paper read by Charles C. Allen, of Missouri, on "Injunction and Organized Labor," an examination of the jurisdiction of courts of equity in cases of civil disturbance like the Chicago railway riots of last year, evoked the most elaborate discussion of the meeting. Perhaps an idea of the attitude of the profession generally upon this subject may be gained by noting that over three-fourths of those who took part in the argument disagreed with Mr. Allen, who thought an injunction a misconceived and unadvisable remedy under such circumstances. Both from a legal and a political point of view, the full text of the discussion contained in the report is well worth reading.

The other published proceedings of the Association, while interesting, need no special mention except the rather startling result of an investigation conducted by Mr. Frank C. Smith, of New York, which showed that one-half of all the points of law decided in the American courts of last resort in 1893 were points of procedure not involving the merits of the case at issue. Discouraging to relate, the code States make a worse showing than those that have retained the common-law practice. The task of reforming legal procedure seems truly Sisyphean.

RECENT CASES.

AGENCY — EMPLOYMENT OF AN ATTORNEY BY COLLECTING AGENCY — COMPENSATION. — Defendant placed a draft in the hands of a collecting agency for collection, and the agency employed plaintiff, an attorney in the city where the debtor lived, to collect and remit. Plaintiff seeks to recover for his services from defendant. *Held*, collecting agency acted as principal in the transaction and not as mere agent, and so plaintiff has no claim against defendant. *Dale* v. *Hepburn*, 32 N. Y. Supp. 269.

This case follows the settled law in New York and the U. S. Supreme Court. *Hoover* v. *Greenbaum*, 61 N. Y. 305; *Hoover* v. *Wise*, 91 U. S. 308. In some jurisdictions the courts hold that where paper is to be collected at a distance, there is an implied authority for collecting agency to employ a sub-agent to make the collection on account of the creditor. The question is one of fact, — was the agreement that the agency should collect the debt, or that it should merely employ some one else to collect it for the creditor? In the absence of any controlling evidence, it is submitted that the New York rule is the better; for, as the Court says, "if banks into whose care negotiable instruments are placed for collecting are regarded as principals, so much the more should a collection agency whose sole business is to collect claims placed in its hands, be so regarded."

BAIL AFTER CONVICTION PENDING APPEAL — POWER OF JUSTICE OF SUPREME COURT. — Paragraph 2, rule 36, of the Supreme Court of the United States (11 Sup. Ct. iv.), provides that where a writ of error is allowed in case of conviction of a crime, the justice or judge of the Circuit Court or District Court shall have power to

admit the accused to bail. *Held*, (1) the Supreme Court had no power to make the above rule, because the common law gives no right to admit to bail after conviction and sentence; no United States statute gives the right; nor does the power to make necessary rules for the orderly conduct of the business of the court give the right. (2) Under this rule Mr. Justice White of the Supreme Court, not being a justice of the circuit where the case was tried, could not make a valid order admitting defendant to bail pending the case on writ of error. *United States* v. *Hudson*, 65 Fed. Rep. 68.

Although bail will not ordinarily be allowed after conviction, yet it seems to be well settled that, in the absence of statute denying bail to a prisoner after conviction and sentence and pending appeal, the admission to bail is purely discretionary with the court, and may be allowed. 1 Bishop's Criminal Procedure, § 253, and cases cited. The decision on the second point would seem to be a sound interpretation of the Supreme Court rule. But both points were reversed in the following case.

BAIL AFTER CONVICTION PENDING APPEAL — POWER OF JUSTICE OF SUPREME COURT. — The defendant in preceding case petitioned for a writ of mandamus to the district judge to compel him to admit petitioner to bail. *Held*, (1) bail may be taken after conviction pending appeal, by order of the proper court, judge, or justice. (2) The order of Mr. Justice White admitting defendant to bail subject to the approval of the District Judge, was valid, since "any justice of this court, having power . . . to allow the writ of error . . . has the authority . . . to order the plaintiff in error to be admitted to bail." Mandamus granted to compel district judge to act and to exercise his discretion with regard to admitting petitioner to bail, not to control his discretion. *Hudson* v. *Parker*, 15 Sup. Ct. Rep. 450 (Brewer and Brown, JJ., dissenting).

The decision on the first point is unexceptionable. See references cited under preceding case. The second point is more doubtful. As a general rule, any court having appellate jurisdiction may take bail. But as Mr. Justice Brewer says, in his dissenting opinion, the Supreme Court, by naming in the rule certain judicial officers as the ones to admit to bail, has, on the principle *expressio unius exclusio alterius*, declared that it has named *all* who are to exercise that authority.

BANKRUPTCY — PETITIONING CREDITOR — POWER TO GO BEHIND A JUDGMENT OBTAINED BY COMPROMISE. — A bankruptcy petition was presented to a registrar founded on a judgment obtained by compromise. The registrar found the compromise unfair though not fraudulent, and refused the petition. On appeal to the Court of Appeal, it was *held*, by Lord Esher and Lopes, L. J., that the court could go behind the judgment and determine whether it was fair; that this was necessary to protect the debtor as well as the other creditors, who would be deprived of their right to get hold of the property if the debtor were put into bankruptcy; that as the fairness of the compromise could be looked into after the debtor was put into bankruptcy, it should be used to protect the other creditors. Rigby, L. J., dissented on the ground that, historically considered, bankruptcy courts had the power to reject a judgment debt only in cases where there was no consideration (which a later Bankruptcy Act had changed) and on ground of fraud. *In re Hawkins, Ex parte Troup* [1895], 1 Q. B. 404.

The dissenting Lord Justice is undoubtedly correct in his treatment of the cases historically; but the principle enunciated in those cases carries us as far as the majority of the court have gone in this case. See remarks of James, L. J., *Ex parte Kibble*, 10 Ch. App. p. 373, at p. 376; also of Lord Esher in *Ex parte Lennox*, 16 Q. B. D. 315, at 321, 322. The principle seems to be that, "having regard to the serious consequences to the debtor [and to other creditors] of allowing a bankruptcy notice to proceed, . . . if the debtor at the hearing . . . can satisfy the court that the judgment was obtained . . . under circumstances that make it inequitable that it should be enforced against him, the court would have power to set the notice aside." Robson's Law of Bankruptcy, 7th ed. p. 190. See also Williams' Law of Bankruptcy, 6th ed. § 37, pp. 113–114. The result of the majority seems an admirable one to reach, and comes within the principle of the previous cases.

BILLS AND NOTES — BANKER'S LIEN — DISCHARGE OF SURETY. — A bank discounted and held a note, and at the maturity thereof, held on general deposit for the maker a sum sufficient to pay the note. It permitted this sum to be checked out. *Held*, that a surety on the note was thereby discharged. *Pursifull* v. *Pineville Banking Co.'s Assignee*, 30 S. W. Rep. 203 (Ky.). See NOTES.

CARRIERS — WARRANTY OF SEAWORTHINESS. — *Held*, that a carrier is liable for losses incurred on a shipment of cattle through shrinkage or fall in market value,

resulting from delay occasioned by a breach of the warranty of seaworthiness, although such breach was due to a hidden defect in the propeller shaft of the vessel, not attributable to the carrier's negligence. *The Caledonia*, 15 Sup. Ct. Rep. 537.

This decision falls in line with the weight of authority and better opinion both in England and the United States, holding a shipowner responsible as an insurer as to latent defects in his vessel, unknown to him and not discoverable upon examination. 3 Kent's Comm. 205. The strong dissenting opinion of three members of the court is based upon an alleged distinction between an injury caused directly by breach of the warranty of seaworthiness and loss resulting from delay caused by such breach. There is no doubt that, generally speaking, a carrier is not an insurer as to the time of delivery or losses flowing out of accidental delay. But this is an action for consequential damages due to a breach of warranty. The fault of the carrier is the breaking the warranty; and it cannot be said that the delay caused thereby is excusable within the rule relied upon by the dissenting justices.

CARRIERS — WHEN A CARRIER BECOMES WAREHOUSEMAN. — A railway company, having carried plaintiff's goods to their destination, stored them in its warehouse, in which they were destroyed by fire, through no fault of the defendant. *Held*, that a railroad's liability as a common carrier continues until notice of the arrival of the goods is given to the consignee, and he has had a reasonable time thereafter to remove them. *Lake Erie & W. R. Co.* v. *Hatch*, 39 N. E. Rep. 1042 (Ohio).

The case is one of first impression, committing Ohio to the view advanced by the New York Courts in opposition to the great weight of authority, making the liability of the carrier as such terminate with the arrival of the goods at their destination. Formerly, an actual delivery of the goods was required of the carrier; and now that modern modes of transportation have made personal delivery impracticable, the jurisdictions which have settled upon a reasonable time for removal, or a reasonable time with notice, in substitution, claim that they are thus following the old common-law rule. In reality they have extended it beyond its utmost limits by making the carrier liable as a carrier when he has ceased to be one, and when the reasons for his extraordinary liability have ceased to exist.

CHOSES IN ACTION — ASSIGNMENT — PRIORITY OF NOTICE TO DEBTOR. — *Held*, where two assignments of a chose in action are made to different persons, the assignee who first gives notice of his claim to the debtor has the prior right, though the assignment to him is later in date than that to the other assignee. *Methven et al.* v. *Staten Island Light, Heat & Power Co.*, 66 Fed. Rep. 113.

This case follows the settled rule in the U. S. Supreme Court, — *Spain* v. *Hamilton's Adm'r*, 1 Wall. 604, — in England and in some of our States. The contrary rule, that the prior assignee prevails, is established in New York, Massachusetts, and many of our States. It is submitted that the New York and Massachusetts rule is correct on principle, and that the general principle that "he who is first in time is best in right" should determine this class of cases, except (1) where the second assignee has been misled by prior assignee's failure to notify the debtor, and (2) where the second assignee has obtained payment, or, what is practically the same thing, reduced the claim to a judgment or effected a novation, in which cases the second assignee has obtained a legal right, and should not be compelled to give it up.

The case of *Spain* v. *Hamilton's Adm'r*, 1 Wall. 604, which established the rule in the U. S. Supreme Court, seems to have been decided on a misapprehension of an earlier decision by the same court, — that of *Judson* v. *Corcoran*, 17 How. 612. There the second assignee had reduced the claim to possession, and the decision is expressly put on that ground. And yet *Spain* v. *Hamilton's Adm'r* is decided as being clearly within the principles recognized in *Judson* v. *Corcoran*.

CONSTITUTIONAL LAW — MUNICIPAL BOUNDARIES — LEGISLATIVE AND JUDICIAL POWER. — An act of the legislature authorized the annexation of a strip of land lying in an adjoining county, to a city. The strip was entirely separated from the city by four distinct municipal corporations, running from the county line to the original boundary of the city. Plaintiff, a landowner in the strip, brought a bill to enjoin the collection of municipal taxes. *Held*, that the legislature had no power to extend the limits of a specially chartered city by adding to it lands entirely separated by intervening territory. Injunction granted. *City of Denver* v. *Conlehan*, 39 Pac. Rep. 425 (Col.).

The court go into the definitions of "city" and "town," and emphasize the idea of unity, of collectiveness, which they think is conveyed by the use of such terms. They conclude by saying that it was never contemplated by the law that the territorial limits of a city might include distinct parcels of land, separated from the city proper by intervening territory. *Smith* v. *Sherry*, 50 Wis. 210, seems to support the view taken by the court. But actual instances inconsistent with the above may be noted. Portions of sev-

eral English counties lie, like islands, entirely within the boundaries of neighboring counties. In Massachusetts, Cohasset is separated from the rest of Norfolk County by two intervening towns. For some time after the passage of the act authorizing the annexation of certain suburbs to Boston, Brighton was a part of the city, though at no point contiguous thereto. Doubtless similar separations exist. It is submitted that the principal case is an instance of the assumption, on the part of a court, of a power to regulate a matter which might be more properly left, it would seem, to the discretion of the legislature. See Cooley, Const. Lim. (6th ed.) 587, 616, and cases cited; 1 Dill. Mun. Corp. (4th ed.) § 185 and cases cited.

CONSTITUTIONAL LAW — POLICE POWER — EXAMINING BOARD. — A statute provided for an examining board of plumbers consisting of three experienced plumbers, the chief inspector of plumbing and drainage of the board of health, and the chief engineer having charge of sewers. It further required all persons engaged in the business of employing or master plumbers to undergo an examination by said board as to their fitness for conducting such a business. *Held* (Peckham, O'Brien and Bartlett, JJ., dissenting), the act is not void, but a valid exercise of the police power. *People* v. *Warden of City Prison*, 39 N. E. Rep. 686 (N. Y.).

The case shows a tendency in the New York court to retract from the position taken in *People* v. *Marx*, 99 N. Y. 377, and to recognize the bounds beyond which the judiciary cannot interfere with the doings of the legislature. The court takes the ground that where an act is intended and appropriate to accomplish the good of protecting the public health, the exercise of legislative discretion is not the subject of judicial review; and that an act should, if possible, be taken as having been passed with this intent. In accordance with this view, the Supreme Court of the United States, in considering the validity of a statute prohibiting the sale of oleomargarine, has said, "If all that can be said of this legislation is that it is unwise, or unnecessarily oppressive to those manufacturing or selling wholesome oleomargarine, as an article of food, their appeal must be to the legislature, or to the ballot-box, not to the judiciary. The latter cannot interfere without usurping powers committed to another department of government." *Powell* v. *Pennsylvania*, 127 U. S. 678. The judiciary of Kansas has in a late case failed to recognize this limitation, and has declared void an ordinance restricting the business of city scavengers to persons appointed by the city. *In re Lowe*, 39 Pac. Rep. 710.

CONSTITUTIONAL LAW — RAILWAY COMPANY — REGULATION OF FARES — REASONABLENESS. — Plaintiff below sued a railway company under a statute which fixed the maximum rate of fare at three cents per mile, and which gave a penalty to the passenger for each overcharge. The company made offers tending to prove that the statutory rate was unreasonable, as under it the company was unable to pay the interest on the capital invested. The offers were ruled out, and the plaintiff had judgment, which was affirmed by the Supreme Court of Arkansas, and, on error, by the Supreme Court of the United States. *St. L. & S. F. Ry. Co.* v. *Gill*, 15 Sup. Ct. Rep. 484. The act incorporating the company which built the road originally authorized a charge of five cents per mile; and defendant, having succeeded to the franchise by a mesne conveyance, claimed the same privilege. The court *held* that the right to fix the fare did not accompany the property in its transfer to a purchaser, in the absence of express provision to that effect in the statute, citing *Morgan* v. *Louisiana*, 93 U. S. 217; *Wilson* v. *Gaines*, 103 U. S. 417; and *Railway* v. *Miller* 114 U. S. 176, as authority.

The court intimated that legislation establishing a rate of fare which was so unreasonable as to practically destroy the value of the carriers' property, might be held unconstitutional, as depriving the company of its property, without due process of law, considering and approving *Railroad Commission Cases*, 116 U. S. 307; *Dow* v. *Beidelman*, 125 U. S. 681; *Railway* v. *Minnesota*, 134 U. S. 418; *Railway* v. *Wellman*, 143 U. S. 339, and *Reagan* v. *Trust Co.*, 154 U. S. 362. But to declare an act unconstitutional is an exercise of the highest power of the court, and the necessity of such a decision must plainly appear. Here the defendant's offers had reference only to that part of the road over which plaintiff had been carried, and did not tend to prove the statutory rate unreasonable for the road as a whole, or for that part of it which was situated in Arkansas. The decision of the State Court (54 Ark. 101), that the correct test was the effect of the act on the defendant's entire line within the limits of the State, was followed; and the court therefore sustained the law for lack of proof going to this extent.

CONTRACTS — DELIVERY IN INSTALMENTS — BREACH IN LIMINE — DAMAGES. — Plaintiff contracted to deliver to defendant 30 bales of silk, — 10 bales July 25, 10 bales August 15, and 10 bales September 10. Plaintiff failed to make first delivery, and August 1 defendant gave notice that it cancelled the contract. Plaintiff could not have made the delivery due August 15, but was able to make the last one, had defendant permitted it.

Held, that defendant's refusal to receive further goods was unjustified, and plaintiff could recover damages as to the last instalment, but not as to the one which he could not have delivered in any event. *Gerli* v. *Poidebard Silk Mfg. Co.*, 31 Atl. Rep. 401 (N. J.), Van Syckel, J., *dissenting*. See NOTES.

CORPORATIONS — BENEFIT SOCIETY — WHO ARE ENTITLED TO UNDISTRIBUTED FUNDS. — All members of a mutual benefit society, organized under Friendly Societies Act (10 Geo. IV. c. 56), and all persons entitled to the distribution of funds under the Society's rules were dead, but the Society had not been dissolved, and a comparatively small sum remained in the hands of the trustees, who disclaimed all beneficial interest. *Held*, that this sum should be held as a resulting trust for the legal representatives of all who had ever been members in proportion to the amount of their contributions, and that an investigation must be had as to who had been members and as to the amount of their contributions, although this investigation would probably more than exhaust the funds on hand. *Cunnach* v. *Edwards*, 11 *The Times* Law Rep. 249 (Chan. Div., Chitty, J.). The Supreme Court of Maine, in a somewhat similar case of an incorporated mutual insurance company, held that the undivided sum should go to the State. *Titcomb* v. *Kennebunk Mut. Ins. Co.*, 79 Me. 315. This Maine decision seems an expedient one, but the English decision seems technically sound.

CRIMINAL LAW — LOTTERIES. — Where a tradesman offers a key to each purchaser of goods, and advertises that one among those given away will unlock a glass box which is displayed in the shop window and contains $25, which sum is to become the property of the person receiving the right key: *Held*, sales of goods under such conditions are in effect a gift enterprise, and a conviction of the proprietor under a city ordinance against lotteries is proper. *Davenport* v. *City of Ottawa*, 39 Pac. 708 (Kas.).

The statutes against lotteries are usually drafted in very broad terms, and a great many of the chance schemes of enterprising dealers could be prevented by law if the prosecuting attorney chose to procure indictments. Thus, a newspaper coupon to each subscriber entitling the receiver to participate in a prize-drawing is a lottery ticket, *State* v. *Mumford*, 73 Mo. 647; to sell a number of packages of tea at the same price, in some of which a prize ticket is enclosed, is to conduct a lottery. *State* v. *Boneil*, 42 La. Ann. 1207; so to advertise that the proprietors of a certain establishment will give a gold watch to the customer who on a certain day guesses the number of beans in a certain jar, *Hudelson* v. *State*, 94 Ind. 426.

CRIMINAL LAW — PROCEDURE — DUTY TO PASS SENTENCE — LOSS OF JURISDICTION. — A prisoner after pleading guilty was allowed to go out of custody without bail. *Held*, the court had no jurisdiction more than three years afterward to rearrest and sentence him. *People* v. *Allen*, 39 N. E. Rep. 568 (Ill.).

The case decides that it is the duty of the court to sentence the prisoner within a reasonable time after a plea of guilty; that the court has not authority to suspend passing sentence an unreasonable length of time. So far the case seems thoroughly sound and in accord with authority. The case further holds that a breach of this duty to pass sentence within a reasonable time deprives the court of all further jurisdiction in the matter. There seems to be little authority on this point. None of the authority cited in the principal case bears on the second point. *Contra* are Beach, New Criminal Procedure, § 1291; *State* v. *Watson*, 95 Mo. 411. The result reached in the principal case — that those proven guilty of a crime or admittedly guilty must go unpunished — is very unsatisfactory. The doctrine of the Missouri case cited above as contra to the principal case on this point, better serves the ends of justice.

CRIMINAL LAW — THE PRESUMPTION OF INNOCENCE — BURDEN OF PROOF. — *Held*, that a refusal to charge that innocence is presumed till guilt is proved beyond a reasonable doubt, is erroneous, notwithstanding that the court does charge, fully and accurately, that the burden of proof is on the prosecution to prove guilt beyond a reasonable doubt. *Coffin* v. *United States*, 15 Sup. Ct. Rep. 394. See NOTES.

EQUITY — FRAUD AGAINST CREDITORS — PAYMENT OF PREMIUMS ON INSURANCE POLICY — EQUITABLE ASSETS. — *Held*, that payments made by a debtor as premiums upon a policy of life insurance upon his own life, for the benefit of a wife and child, are essentially gifts to the beneficiary, and conclusively fraudulent and void as against creditors existing at the time of such payments. *Merchants' & Miners' Transportation Co.* v. *Borland*, 31 Atl. Rep. 272 (N. J.).

The decision seems manifestly right, and the doctrine is one established in England. See *Freeman* v. *Pope*, L. R. 9 Eq. 206; *Stokoe* v. *Cowan*, 7 Jur. (N. S.) 901; *Jenkyn* v. *Vaughan*, 25 L. J. Ch 338. In U. S. the decisions are in conflict. In *accord* with the principal case are *Fearn* v. *Ward*, 80 Ala. 555; *Stigler's Ex.* v. *Stigler*, 77 Va.

163. *Barry* v. *Equitable Life*, 59 N. Y. 587, 593 (*semble*). *Contra*, are *Elliot's Appeal*, 50 Pa. 75 (*semble*); *Central Bank* v. *Hume*, 128 U. S. 195. For an exhaustive criticism of the latter case by Prof. Williston, see 25 American Law Review, 185.

EVIDENCE — DEED — COLLATERAL UNSEALED INSTRUMENT. — Plaintiff's intestate deeded land to defendant absolutely. At time of delivery of the deed both signed a separate unsealed instrument, stipulating that the deed was conditioned on the grantee's supporting the grantor for life. Both instruments were made for the purpose of effectuating a previous oral contract. Both were recorded. In an action of ejectment it was *held*, that the two instruments should be read together in determining the grantee's title under the deed. *Norton's Adm'r* v. *Perkins*, 31 Atl. Rep. 148 (Vt.).

It is well settled that parol evidence is admissible to show that a deed absolute on its face was really intended as a mortgage. The cases seem to limit this exception to transfers intended as security, and the principal case seems to go farther than any of the authorities.

INSURANCE — RECOVERY UPON AN ACCIDENT POLICY — LEGAL CAUSE. — Defendant company insured the plaintiff's intestate against accidents, but with a proviso that the policy should not cover suicide, intentional injuries or death resulting from disease. The insured accidentally shot himself. The wound resulted in tetanus, and on the eighteenth day he was found dead, with his throat cut and a scalpel in his hand. It was also evident that he had died in a tetanic spasm. *Held*, a charge was unexceptionable to the effect that, if the wound was an accident and produced tetanus, and if the insured was impelled to kill himself from the intense agony caused by the tetanus, then the jury might find that the pistol shot was the proximate cause of the death. Although the deceased cut his own throat and died from the direct effects of the cut. *Travellers' Ins. Co.* v. *Melick*, 65 Fed. Rep. 178.

This case is interesting as involving the doctrine laid down in *Schaeffer* v. *Ry.* 115 U. S. 249. It was suggested in 8 HARVARD LAW REVIEW, 176, that the question of whether an accident could be the proximate cause of insanity and subsequent suicide, should at least be submitted to a jury. This was practically the question submitted here, and a verdict for the plaintiff is sustained. The action in the above case sounded in tort, and the doctrine of proximate cause was invoked to measure the liability; while in the principal case the policy fixed the extent of the liability and the only question was whether death did result from the wound. The difference between the cases in principle, however, is not great, and this decision would seem correct in allowing a jury to pass upon the evidence.

PERSONS — CRIMINAL CONVERSATION. — *Held*, that a married woman cannot maintain an action for damages against one of her own sex, where the right of recovery is based solely on alleged adulterous acts between plaintiff's husband and the defendant. *Krocssin* v. *Keller*, 62 N. W. Rep. 438 (Min.).

Justice Collins rests his decision upon the distinction between an action simply in the nature of criminal conversation, and one founded on the substantive right of a wife to the society and protection of her husband. It is upon this ground, if at all, that the case is to be supported. *Haynes* v. *Nolin*, 129 Ind. 581; *Bennett* v. *Bennett*, 116 N. Y. 584.

The result arrived at by the court here embodies the spirit of the English rule that a husband alone can obtain divorce by merely proving the fact of criminal conversation, and expresses the general impression of the day that the male is the only sex which can be greatly damaged by violation of the marriage vow. There is little doubt that, at present, this decision would be widely approved in United States courts, especially whenever the effect of modern statutes upon the legal status of women has not been felt in its full force. But *quære* whether the social, as well as the legal, revolution in the relations of the sexes should not bear in a practical manner upon an action of this kind. There is at least one decision in this country which would seem to point in that direction. *Seaver* v. *Adams*, 19 Atl. Rep. 776.

PROPERTY — CONTINUOUS AND APPARENT EASEMENTS. — Plaintiff and defendant purchased a building which consisted of two dwellings exactly alike. Each simultaneously took a separate deed of his dwelling and his respective half of the land on which the building was located. Each dwelling was supplied with water from a well somewhere upon the land. The only part of the water-supplying apparatus visible was a pump in each kitchen. The well was afterwards found to be on defendant's land and he shut off plaintiff's water supply. *Held*, the right to water from this well passed to plaintiff with his deed, it being a continuous and apparent easement. *Larsen* v. *Peterson*, 30 Atl. Rep. 1094 (N. J.).

This decision follows *Pyer* v. *Carter*, 1 H & N. 916, and is *contra* to the *dictum* in *Suffield* v. *Brown*, 4 De G. J. & S. 185, which has been followed in many jurisdictions.

The only question arising in the case was whether this was an apparent and continuous easement, the Vermont court recognizing no distinction between the reservation and grant of easements of this character upon the severance of the tenement.

PROPERTY — DEEDS — BOUNDARY ON A HIGHWAY. — Land bounding on a highway was described in a deed by metes and bounds, but no mention was made of the highway. *Held*, the deed carried the fee to the middle of the highway. *Grant* v. *Moon*, 30 S. W. R. 328 (Mo.).

The doctrine finds support among such text-writers as Elliot and Angell, and is also law in Connecticut. *Champlin* v. *Pendleton*, 13 Conn. 23; *Gear* v. *Barnum*, 37 Conn. 229. New Jersey, however, holds otherwise. *Hoboken, etc. Co.* v. *Kerrigan*, 31 N. J. Law, 13. It is submitted that the New Jersey doctrine is the better. A presumption that the grantor intended to convey the fee to the middle of the highway must be gathered from the language of the deed, and where the deed does not mention a highway, or show that the grantor knew that one existed, the presumption should rather be that the land was intended to pass as described.

PROPERTY — DEEDS — BOUNDARY ON A HIGHWAY. — In connection with the foregoing case, the following may be noticed.

H and G streets crossed each other, G running east and west. A deed described land as follows: "Beginning . . . at the southeast corner or intersection of H and G streets, and running thence easterly, bounding on G street, 25 feet, then southerly . . . to a nine foot alley; then westerly, bounding on said alley, to H street, 25 feet; and thence northerly, bounding on H street, to the place of beginning." *Held*, the deed did not carry the fee to the middle of H street. *Rieman* v. *Baltimore Belt Ry. Co.*, 31 Atl. Rep. 444 (Md).

The court argues that the starting-point is fixed by the words "southeast corner" at the intersection of the sides of the streets, and that if one end of a boundary line is at the side of a highway, no presumption can carry the other end out into the centre. The case is opposed to the weight of American authority, which holds that even if there is a fixed monument on the side of the highway, a boundary "running thence along the highway" will carry the land in its entire length to the centre of the street. The Maryland court is, however, consistent in following its earlier decisions on this subject.

PROPERTY — DEEDS — CONSTRUCTION. — An instrument was executed to appellants with all the formalities of a warranty deed, but contained a clause that the deed was to be of no effect until after the death of the grantor and then to have full force. *Held*, that a present interest in the land passed to the grantee but the full enjoyment was postponed until the grantor died. *Wilson* v. *Carrico*, 40 N. E. Rep. 50 (Ind.).

At common law it was a perfectly well settled principle that a freehold to commence *in futuro* could not be conveyed, as the title would be in abeyance; and to have the title in abeyance for ever so short a time was against all principles of feudal law, which required that there should always be a known owner of every freehold estate. However, under a statute in Indiana a freehold estate to commence *in futuro* may be created. Having disposed of the difficulty with which we would have been met had the deed in the present case come up in a jurisdiction where the common-law rule as to this point still held, the decision in the principal case seems to be satisfactory. The instrument was not intended to be a devise as the words used were, "convey and warrant," plainly importing an intention to convey a present estate to the grantor. The deed was also duly recorded like any other deed. The decision of the court certainly carries out the intention of the parties and though the deed is a curious affair, allows it to stand, thus giving the grantor in effect a life interest in the land with remainder to the grantee in fee. Instruments of a very similar tenor have been upheld in *White* v. *Hopkins*, 4 S. E Rep. 863; *Graves* v. *Atwood*, 52 Conn. 512; *Webster* v. *Webster*, 33 N. H. 18; *Abbott* v. *Holway*, 72 Me. 298; and other cases.

PROPERTY — DISTRIBUTION — DEBT DUE FROM HEIR. — Where a judgment lien attached to land immediately on its descent to the heir, it was *held*, that the administrator was entitled to subject the lands to the payment of a debt due by the heir to the estate, in preference to the claims of the judgment creditor. *Streety* v. *McCurdy*, 16 So. Rep. 686 (Ala.).

As the court admit, what authority there is on this point is contra. See cases cited. The Alabama case, *Nelson* v. *Murjee*, 69 Ala. 598, upon which the decision is primarily rested, decided the same question in regard to the proceeds of real estate in the hands of the administrator. This case seems also against the weight of authority. *Smith* v. *Kearney*, 2 Barb. Ch. 533; *Sartor v. Beatty*, 25 S. C. 293; *La Foy* v. *La Foy*, 43 N. J. Eq. 206. The last case points out the distinction between allowing this set-off in regard to

personalty and in regard to realty, the latter passing directly to the heir or devisee without the aid of the administrator. However, the rule of the principal case commends itself as eminently practical, and might well be supported on that ground.

PROPERTY — ESTATE TAIL — CURTESY. — A testator devised land to his daughter A., her heirs and assigns forever, "providing that she dies leaving lineal heirs of her body;" but, in case she dies "leaving no child or children or descendants," he gave the land to B. In an action of ejectment by B. against A.'s husband, *held*, that A. took an estate tail, and therefore, upon her death, the defendant became tenant by the curtesy, notwithstanding the death of all issue during A.'s life. *Holden* v. *Wells*, 31 Atl. Rep. 265 (R. I.).

The law deals kindly with a testator's intentions, and often carries them into effect regardless of the strict rules which otherwise control the creation of estates. The only question here is whether the testator's words can be said to point to an estate tail as the object of his intentions, and there is certainly authority for using them in that sense. 1 Washb. Real Prop. 105. It is immaterial to the case, however, whether this be an instance of an estate tail determining by failure of issue or of a fee determining by executory devise, since it is perfectly settled law that both are exceptions to the general rule denying curtesy after the determination of the principal estate. 4 Kent's Comm. *34.

PROPERTY — MORTGAGE SALE — FOREIGN ADMINISTRATOR — RIGHT TO EXECUTE POWER OF SALE. — Bill to enjoin the completion of a sale of land in Rhode Island under a power of sale contained in a mortgage by complainant to W. C., deceased, late of Massachusetts. Respondent, having been duly appointed administrator in Massachusetts, sold the land at public auction under the power, which ran to the mortgagee, his executors, administrators, and assigns. *Held*, though a foreign administrator, he could execute the power in Rhode Island. *Thurber* v. *Carpenter*, 31 Atl. Rep. 5 (R. I.).

The court admits that it has been held that a foreign administrator cannot assign a mortgage where the legal title to the land is affected, because foreclosure or a writ of entry might be necessary to enforce the right under the mortgage, and a foreign executor could give no right which he could not himself exercise. The present case is distinguished on the ground that the rule is inapplicable to the modern form of mortgage with a power of sale, which does not require foreclosure proceedings. In such a case, an administrator is regarded as acting "not strictly in his official capacity as the representative of the deceased mortgagee, but rather as a *persona designata*, and so, as the appointee of the mortgagor," exercising the power "by virtue of the contract between the parties." The authority upon the point seems meagre, but the cases cited sustain the proposition enunciated. *Doolittle* v. *Lewis*, 7 Johns. Ch. 45; *Hayes* v. *Frey*, 54 Wis. 503; *Holcombe* v. *Richards*, 38 Minn. 38.

QUASI-CONTRACT — ATTACHMENT — ACTION ARISING ON CONTRACT. — On appeal from an order of the circuit court discharging an attachment, the Supreme Court of South Dakota *held*, that the attachment should not have been discharged, as a judgment of a sister state was a contract within the words "action arising on contract" as used in the attachment law, and that it was immaterial whether the judgment was founded on a tort or on a contract. *First Nat. Bank of Nashua* v. *Vanvooris*, 62 N. W. Rep. 378 (So. Dakota).

Though the court admits that a judgment is not a true contract, but a quasi-contract, it says that the legislature must have used the word "contract" in the statute in the sense of an action *ex contractu* as distinguished from an action *ex delicto*. This is giving rather a broad interpretation to the word "contract." The two kinds of obligations are entirely distinct, and if the legislature meant to include quasi-contracts in the attachment law, it should have said so, as the Nebraska legislature has done. It would seem that the interpretation of the lower court was the more satisfactory, and it has no respectable weight of authority to support it. Black on Judgments, vol. i., §§ 8, 11, and cases cited, and Keener on Quasi-Contracts. Especially does the Supreme Court seem to be legislating rather than simply construing a statute, when it says that it is immaterial whether the judgment arose from a tort or a contract. Where a judgment is founded on a tort it seems almost impossible to call it a contract, and it is held on the best authority that such a judgment is not a contract within the meaning of that clause of the federal Constitution providing against the impairing of the obligations of a contract. *Louisiana* v. *Mayor*, 109 U. S. 285, 3 Sup. Ct. 211, and text-books above cited.

QUASI-CONTRACT — MISTAKE OF FACT — MONEY PAID UNDER PRESSURE OF LEGAL PROCESS. — The defendants issued a summons against plaintiff to recover his proportion of certain street improvement expenses alleged to be due from him as an abutting owner. The plaintiff paid the money before the summons was heard, and the summons was withdrawn. The plaintiff, having discovered that his premises did not abut

on said street, brought an action to recover the amount paid in. *Held*, that the money having been paid under compulsion of legal process, could not be recovered back. *Moore* v. *Vestry of Fulham* (1895), 1 Q. B. 399.

This decision shows that the fact that the money was paid under a mistake of fact, does not take the case out of the rule, well established since the case of *Marriot* v. *Hampton* (7 T. R. 269), that money paid under pressure of legal process cannot be recovered back, even though it be against the conscience of defendant to keep it. The decision shows further that the *dictum* of Lopes, L. J , in *Caird* v. *Moss*, 33 Ch. D. 22, 36, seeming to limit this doctrine to cases where the process still stands, is not law.

SALES — PLEDGE — PLEDGOR AGENT OF PLEDGEE. — Plaintiff redelivered bill of lading which he held in pledge, to pledgors, with power to sell as his agent. Pledgors sold to A & Sons, and subsequently failed. Action brought to determine whether plaintiff, the pledgee, or the creditors of the bankrupt pledgors were entitled to the balance of the purchase money in the hands of A & Sons. *Held*, that pledgee might constitute pledgor his agent to sell without losing his lien; and that plaintiff, therefore, was entitled to the money in question. *North Western Bank* v. *Poynter et al.* (1895), App. Cas. 57.

This case, which came up in the House of Lords on an appeal from the Court of Session, Scotland, settles the law for Scotland in accordance with the English and American law on this point.

STATUTE OF LIMITATIONS — WHEN IT BEGINS TO RUN — CONCEALED TRESPASS. — Defendant excavated coal inadvertently under plaintiff's land. Plaintiff had no reasonable means of discovering the trespass, and did not learn of it until seven years afterward. *Held*, that in case of trespass to or in a lower stratum, which plaintiff had no reasonable means of discovering, Statute of Limitations does not begin to run until the discovery of the trespass. *Lewey* v. *H. C. Frick Coke Co.*, 31 Atl. Rep. 261 (Pa.). See NOTES.

TORTS — DECEIT. — The officers of F. Bank made four reports to the Comptroller as required by the provisions of the National Banking Act. The officers also published and mailed to plaintiff a statement, not required by law, representing the bank to be in a flourishing condition. All these statements were known by those making them to be false. Plaintiff, believing these statements to be true, and relying on them, discounted a note solely on the security of shares of F. Bank. These shares turned out to be worthless. *Held*, under these circumstances, F. Bank was not liable for the loss sustained by plaintiff. *Merchants Bank* v. *Armstrong*, 65 Fed. Rep. 932.

It is submitted that in making and publishing these statements the bank officers were acting within the scope of their authority; that the deceit was therefore, as regards liability in a civil action, that of the bank itself.

It is doubtless true that these statements were not issued for the purpose of being used in the manner in which they were used by plaintiff. It is equally true that had defendants thought, they must have realized that these statements would be used in the manner in which they were used by plaintiff. The court might have held defendants liable under these circumstances, citing in support of such decision *Bedford* v. *Bagshaw*, 4 H. & N. 538.

TORTS — MALICIOUS INTERFERENCE WITH BUSINESS. —The defendant, a delegate of a trade union, induced the plaintiffs' employer to discharge them, his sole object being to injure the plaintiffs. *Held*, that this was an actionable wrong, whether it involved a breach of contract or not. *Flood* v. *Jackson*, 11 *The Times* Law Rep. 276 (Q. B. D.).

Affirmed in the Court of Appeal, 11 *The Times* Law Rep. 335. The case is a direct decision on the point of malicious interference, all suggestion of conspiracy and breach of contract being put aside. The discussion by the court does not remove the difficulties of the case, but probably the best result has been reached. The doctrine is reviewed in a recent note in 8 HARVARD LAW REVIEW, 499, and seems to be gaining favor everywhere. See *Graham* v. *St. Charles St. R. Co.*, 16 So. Rep. 806 (La.), in which the same decision is made.

TORTS — TURNTABLE CASE. — *Held*, that a railroad company maintaining on its land a properly constructed turntable owes no duty to take precautions against injuries which may be suffered by children playing on it. *Walsh* v. *Fitchburg Ry. Co.*, 39 N. E. Rep. 1068 (N. Y.), reversing *Walsh* v. *Fitchburg Ry. Co.*, 28 N. Y. Supp. 1097. See NOTES.

TRUSTS — FRAUDULENT PURCHASE BY AGENT. — Plaintiff employed defendant, his attorney-at-law, to purchase an interest from plaintiff's brother. The lawyer paid his own money, and was allowed to take a conveyance in his own name but only by repre-

senting to the brother that he was purchasing for plaintiff. Defendant refused to convey to plaintiff, although the latter tendered full compensation. *Held*, defendant is constructive trustee for plaintiff. *Haight* v. *Pearson*, 39 Pac. Rep. 479 (Utah).

A sound case. By means of his fraudulent representations, defendant caused plaintiff damage, — a tort, for which equity will allow specific reparation. It would seem that the stress put by the court upon the confidential relations between lawyer and client was unnecessary. The fact that the conveyance was procured by fraud makes it needless to consider what effect the Statute of Frauds would have upon such an oral understanding between principal and agent. *Onson* v. *Cown*, 22 Wis. 329. *Cipperly* v. *Cipperly*, 4 Thomp. & C. 342 *accord*. See also *Lombard* v. *Cowham*, 34 Wis. 486.

TRUSTS — PRINCIPAL AND AGENT — FOLLOWING TRUST FUNDS. — Defendant's intestate had been the New York agent of plaintiffs, buying and selling goods for them. Interest was charged on the balances against whichever party happened to be the debtor, and settlements were made semi-annually. At the last settlement before deceased's death plaintiffs had been indebted to him, but had since remitted drafts discharging the debt and leaving a balance due them; and the avails of the drafts remitted after the indebtedness had been discharged could be distinctly traced into deceased's bank account. *Held*, plaintiffs can prevail against deceased's general creditors on the principle that "where the principal can trace his property into the hands of his agent, he may follow and reclaim it." "Because deceased was plaintiffs' agent, the property received by him became impressed with a trust character." *Roca* v. *Byrne et al.*, 39 N. E. Rep. 812 (N. Y.).

The court seems to have entirely disregarded the fact that "interest was paid on the balances." The payment of interest, it is submitted, shows conclusively that the deceased received the money as debtor, and not as trustee. "If a man pays interest for money, he must be entitled to the use of it." *Ex parte, Broad*, 13 Q. B. D. 740.

TRUSTS — STATUTE OF FRAUDS — PAROL AGREEMENT TO HOLD IN TRUST. — Plaintiff conveyed land to the defendant, his sister, without consideration, and in reliance on her parol promise to hold in trust for him. Plaintiff brought action for reconveyance. *Held*, that the case fell within the Statute of Frauds, and that the plaintiff was not entitled to reconveyance. *Hutchinson v. Hutchinson*, 32 N. Y. Sup. 390. See NOTES.

WILLS — REVOCATION — SECOND CODICIL — INTENTION TO REVOKE FIRST CODICIL. — After testator had made his will and a first codicil, his wife died. He then made a second codicil, nowhere referring to the first, but only to the will. By this codicil he appointed the same executors which he had by the first codicil, gave legacies of the same sums to the same persons, gave the same directions as to his place of burial and a monument for himself, and devised an India shawl again to his sister-in-law, as he had done in the first codicil. But he made a gift of £400 to Mary Alridge, whereas by the first codicil he had bequeathed her £200. He also omitted a revocation of a gift of jewelry and other articles to his wife, and the subsequent gift of £5,000 to his sister, Julia Stainforth, and substituted for it a direction to the trustees to set aside £5,000 out of the residue for such sister. In all other respects the language of the second codicil was identical with the first. *Held*, testator intended to revoke the first codicil and substitute for it the second, and that probate should go of the will and second codicil only. *Chichester et al.* v. *Quatrefuges et al.*, 11 *The Times* Law Rep. 328.

The case is interesting as showing how a probate judge looks entirely at the intention of the deceased to find out what documents he or she meant to operate as his or her will. The court says that extrinsic evidence may be freely made use of; but, as there is none, the instruments show on their face the intention of the testator merely to repeat the first codicil by the second, the strong points being, the fact that he referred only to the will in the second codicil, and (apart from the change in the amount of the legacy to the nurse effected after the second codicil had been engrossed) the codicil expressed only the legal effect of the first, having regard to the fact of the supervening death of the testator's wife, and the fact that the specific legacies of sums of money and articles were identical in both. There would seem here to be sufficient evidence to maintain the construction of the court as to the testator's intention. The Wills Act (1 Vic. c. 26, § 20) says nothing in regard to what will or codicil, being duly executed, will revoke a former one, and consequently it has now become settled that no express revocation is necessary, but that a revocation by implication is sufficient. It was on this ground that the court proceeded in the principal case, following *Jenner* v. *Ffinch*, 5 P. D. 106, and *Dembsey* v. *Lawson*, 2 P. D. 98.